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Commissioner's Secretary
Margalie Roman Salas
Office of the Secretary
Federal Communications Commission, The Portals
445 12th Street, SW, Room TW-A 325
Washington, DC 20554

Dear Secretary Salas:

This letter is being submitted in response to FCC NPRM in WT docket No. 99-87 to commence proceeding to implement statutory changes to its auction authority in response to the Balanced Budget Amendment of 1997.

As General Manager of the West Virginia Parkways, Economic Development and Tourism Authority, I am writing to ensure that our position on this issue is clearly heard and to state in the strongest terms possible, that the Commission should retain the existing shared use licensing scheme for the non-multilateration portions of the 902-928 MHz LMS band. The West Virginia Parkways Authority operates an 88-mile toll road from Charleston to Princeton, West Virginia and is currently installing a new toll collection system to include electronic toll collection. The new toll collection system is scheduled to be operational by 31 December 1998.

The Parkways Authority is a member of the E-ZPass Interagency Group (IAG) which is an organization currently representing 12 public toll agencies in six states that are implementing electronic toll collection under the name E-ZPass. There are currently more than 2.75 million toll transponders in circulation for use in the E-ZPass system in New York, New Jersey, Delaware, Maryland and Massachusetts. Electronic toll collection is scheduled for implementation in Pennsylvania within the next several months.

This electronic toll collection system enables customers to travel throughout these states using a single transponder resulting in improved traffic operations and air quality for individual metropolitan areas and throughout the multi-state region. The system is extremely successful technically and exceedingly popular with the public who utilize E-ZPass. We anticipate the use of

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the system to double in the next few years as even more agencies in additional states implement E-ZPass electronic toll collection. At this time, at least five additional toll agencies are pursuing acceptance into the E-ZPass IAG which would further extend the use of this technology to Ohio, West Virginia and across the New York-Canadian border.

The IAG agencies have worked together since the 1980's to ensure the public benefit of a united reciprocal and interoperable electronic toll collection system. This ITS application is a "not-for profit" public benefit enjoyed by several millions of drivers in these and other states. The current proposal of the Commission would negatively impact the opportunity for continued interoperability and reciprocity which is clearly contrary to the public interest objective of the Commission.

This multi-state, multi-agency ITS application is the result of hundreds of million of dollars of investment by and for public toll authorities on behalf of the public. Furthermore, other toll agencies have committed additional hundreds of millions of dollars for the implementation of this system on their roadways, extending the public benefit to additional major metropolitan areas throughout the region. This enormous economic investment of public monies should be considered by the Commission in their determination of the use of the bandwidth in question.

Action such as that proposed by the Commission will severely impact the existing base of customers and will certainly doom any further expansion as well as the benefit to the driving public. The results of these actions, if taken, would inconvenience millions of motorists, increase traffic choke points on roads where traffic has been significantly reduced and in some cases nearly eliminated.

Retention of shared use licensing in the circumstances of the LMS services described here as an alternative to competitive bidding licenses is consistent with, and is supported by, the exemption provision of Balanced Budget Amendment of 1997. Rather, section 309(j) of the Act contains both specific and general guidance for the Commission to consider alternatives to competitive bidding selection. The public interest rationale on which the shared use licensing scheme for this band was originally based has been borne out by the healthy expansion of LMS uses in recent years under this licensing scheme. Those public interest benefits are ample justification for the retention of this current licensing scheme.

The public interest objectives on which the Commission originally decided to adopt a shared use licensing for the non-multilateration portions of the 902-928 MHz band are still valid and should be supported here. These include: (1) non-multilateration LMS systems generally cover relatively short distances; (2) they promote spectrum efficient frequency reuse; and (3) in practice, shared use has been administratively efficient and promoted timely introduction of new or expanded service.

Retaining shared use licensing for non-multilateration LMS systems is the most effective way of avoiding disruption or impairment to the operations of incumbent licensees like the IAG members (including the millions of individuals whose vehicles are served by their LMS systems). See also the Commission's conclusion in its NPRM in ET Dkt 98-95 that it "intend[s] to allow continued use of the 902-928 MHz band" for types of systems operated by the IAG members.

Continued licensing of non-multilateration LMS systems under a shared use would also protect the full public benefits of interoperability and reciprocity among millions of users and LMS systems in numerous states by continuing flexible and streamlined licensing procedures under existing LMS rules to support expansion of these systems. See sections 90.353(h) and (i) of the Commission's rules.

Retention of a shared use licensing for the non-multilateration portions of the 902-928 MHz band is also consistent with the broad exemption for the competitive bidding requirements of the Balanced Budget Amendment of 1997 for state and local governments and quasi-governmental entities for internal radio services. It is also supported by the Commission's continuing obligation under section 309A to avoid mutual exclusivity in application and licensing proceedings.

Public interest would not be served by requiring state and local governments or quasi-governmental entities such as toll authorities to bid for geographic spectrum rights. Such a structure would be inherently impractical and unsuitable for such authorities because of the small geographical service area requirements of non-multilateration LMS systems. Furthermore, it would be impractical for the Commission to design service area and channelization plans to accommodate the diverse spectrum requirements of different types of LMS systems under exclusive licensing.

The public interest would also not be served by requiring state and local governments and quasi-governmental entities to compete with commercial interests for the purchase of spectrum shifts. The cost of doing so would be a public financial burden which cannot be justified and is not necessary to foster spectrum efficient service by toll authorities.

The loss of primary spectrum rights to another bidder in the event a toll authority was outbid by a commercial entity would also impair or possibly preclude needed technical upgrades, changes or geographic shifts in their incumbent ETC/other systems. The threat of possible stranded and wasted public investment under such circumstances has not only operational consequences but will result in a backlash by the public whose quality of life is affected.

The possible overlay licensee and band manager approaches outlined in the FCC's NPRM are absolutely not acceptable substitutes for the current shared use licensing schemes for many of the same reasons presented above.

We encourage and support the Commission in identifying non-profit ITS applications such as E-ZPass electronic toll collection as a public benefit and service as was approved previously by the Commission. Further, the Commission should implement measures to ensure that the financial investment and commitment made to electronic toll collection by the public toll agencies are protected and supported as the Commission determines the use of the 902-928 MHz bandwidth.

Sincerely,

Lawrence Cousins Deputy

For William H. Gavan
General Manager

Courtesy copy: Gary D. Michael

cc: Rena Barta